

**Environmental Law and Justice Clinic**

August 22, 2017

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On June 29, 2017, Greenaction for Health and Environmental Justice filed a Petition with the United States Nuclear Regulatory Commission (NRC) seeking the revocation of Tetra Tech EC, Inc.'s nuclear materials license.<sup>1</sup> The petition is based on our investigation of Tetra Tech's fraudulent conduct in the scanning, sampling and remediation of radioactive contamination at the Hunters Point Naval Shipyard in San Francisco, California. In filing the NRC Petition, Greenaction seeks to ensure Tetra Tech is barred from performing future radiological remediation at Hunters Point Shipyard and other sites across the country. However, while the petition seeks to hold Tetra Tech accountable for its fraudulent conduct, even a successful outcome at the NRC will not resolve the more pressing issue: What is being done to address the consequences of Tetra Tech's fraud and ensure proper cleanup of the site?

Although Tetra Tech has admitted to a limited amount of soil sampling fraud, it has never acknowledged the full extent of its irresponsible and cleanup-compromising conduct. Our investigation uncovered fraudulent activity for which Tetra Tech has never taken responsibility and that remained unknown to the Navy and regulatory agencies. Declarations under penalty of perjury filed in support of the petition by numerous former radiological workers detail multiple instances of falsification and disregard for proper procedure outside the soil sampling context. Furthermore, as the petition and supporting declarations more fully explain, the fraud took place over a

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<sup>1</sup> Greenaction's Petition to Revoke Materials License No. 29-31396-01 and supporting documents are available online at: [https://www.dropbox.com/sh/1gfn7ja0fc3c5l6/AAD7-9qzmbhhUTkGvpN4p\\_Xua?dl=0](https://www.dropbox.com/sh/1gfn7ja0fc3c5l6/AAD7-9qzmbhhUTkGvpN4p_Xua?dl=0).

period of years, tainting nearly every aspect of the cleanup in which Tetra Tech was involved.

For example, the declaration of former Senior Health Physicist Anthony Smith states that on one occasion he took what was supposed to be a clean background sample from the border of Parcel A, but sampling results later revealed approximately 2-3 picocuries per gram of cesium-137, far exceeding the established cleanup standard. Rather than informing the appropriate persons and agencies of this discovery and taking corrective action, Smith's supervisor instructed him to dispose of the sample and never mention it again. Similarly, Smith's declaration details an assignment under building 351A in which he was instructed to discard sample results showing continuing contamination after multiple failed remediation attempts, resulting in the improper clearance of the building before the contamination was fully remediated. Mr. Smith's experiences were not isolated; other former employees explain how potentially contaminated soil was shipped offsite or used as backfill at the Shipyard and how incompetent employees severely compromised the integrity of the cleanup. The declarations show that radiological scans were falsified for nearly all buildings scanned from 2009 onward, at the direction of Tetra Tech management. Further, Mr. Smith's declaration states that radiological workers and supervisors changed data generated by radiological field workers; readings exceeding cleanup levels were altered so they would be within the cleanup standard, hiding the continued existence of hazardous radiation on the site.

As a result of the whistleblowers' revelations, we now know that the Hunters Point cleanup is significantly compromised. What we do not know, however, is the full impact of the fraud on the cleanup. For instance, while the Navy previously relied on low potassium-40 (K40) results and soil characteristics to identify falsified samples, our interviews of former employees revealed it is very likely those characteristics are insufficient for identifying all fake samples. Moreover, while our efforts to speak with former employees helped uncover previously unknown information, our ability to identify and locate former employees was limited and only tells part of the story. It is incumbent on the Navy to answer the question: How many more Anthony Smiths are out there?

To date, it is our understanding that the Navy has sought to address Tetra Tech's fraud by hiring contractors to scrutinize Tetra Tech's work through a review of site documents and sampling records. In an undated handout entitled "Radiological Data Review," given out at the Navy's February 7, 2017, "Community Meeting Open House," for example, a two-phase process is described in which Phase I is to "develop [a] database of available soil data; confirm accuracy of radiological data; identify questionable results which require further analysis; and identify gaps in data for Phase II evaluation." It also says "the next step" in its response to Tetra Tech's fraud is "to

evaluate the existing radiological data and identify potential areas of concern.”  
(Emphasis added.)

The flaw in this approach is its reliance on “existing radiological data,” that is, data reported by Tetra Tech. Our declarants state that not only did known “clean” soil get passed off for soil to be tested for residual contamination, laboratory data were also intentionally altered. In short, much of the “existing radiological data” is fraudulent and cannot be relied on. Declarants also describe fraudulent sampling being taken from “close-by” the intended location - samples which would have the same radiological profile as those from the intended location and could not be identified as fraudulent by focusing on low K-40. As a result, looking at “existing radiological data” cannot identify all “potential areas of concern.” To the extent such review relies on data reported by Tetra Tech and its subcontractors, the information simply cannot be trusted.

We also note that one of the data review contractors hired by the Navy, CH2M Hill, has had its own fake data scandal at the Hunters Point Shipyard Superfund site, resulting in a significant fine by the Bay Area Air Quality Management District. The use of this firm raises additional concerns about the integrity of the data review process.

It is the responsibility of the Navy and regulatory agencies to thoroughly investigate the impact of the fraud on the cleanup and ensure the site is properly remediated so that it is safe. There are two essential actions the Navy must take. First, full surface and subsurface retesting of all areas and soil, including what has previously been deemed “clean,” must be done and all buildings must be re-scanned. Second, the only way to learn the true nature and extent of Tetra Tech’s fraud is to speak to all those with firsthand knowledge of exactly what occurred. Only those who were involved in the radiological remediation can fully describe the scope of the fraud and, quite literally, where potentially radioactive soil is buried. Accordingly, in addition to the technical contractors the Navy has hired to examine Tetra Tech’s work, the Navy must hire competent professional investigators to locate and interview as many former Hunters Point rad workers as can be found.

In sum, we write to you today to request that a comprehensive investigation be performed to reveal the full extent of Tetra Tech’s fraud so that necessary steps can be taken to ensure a proper cleanup. As our investigation revealed, speaking face to face with those who were on the ground during the cleanup is the most effective method of learning what took place. Further, although document reviews alone will not reveal the extent of the harm, documents including Tetra Tech’s Daily Status Reports, which describe in detail what work was performed and when, should be integrated with staffing and chain-of-custody documents, among others, to enable trained investigators to identify and interview former employees about any fraudulent conduct on the

projects on which they worked. To start, we would be happy to assist investigators by arranging meetings with the whistleblowers we interviewed during the course of our investigation.

Finally, if the Navy is serious about rebuilding trust in the cleanup, it must be transparent and involve community oversight. Unfortunately, the lack of transparency and the resultant lack of trust by the community continues. The so-called "Tiger Team" meetings involving regulatory agencies, the City and the developer seeking to build and profit from thousands of luxury homes continue with no public involvement, exclusion of residents and community organizations and apparently without minutes being taken or retained.

The only way to re-establish trust in the cleanup is for the Navy to fund a Technical Assistance Grant for community/environmental justice groups so they may adequately evaluate the Navy's attempt to rectify a flawed cleanup. This includes, among other things, participating in the Tiger Team meetings.

In light of the new information we have uncovered, we also request a meeting with you at your earliest possible convenience to discuss how best to proceed in remedying Tetra Tech's fraud and the community's participation in that effort.

Thank you for your attention to this matter. We look forward to hearing from you.

Sincerely,



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